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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW RENE GUZMAN,

Defendant and Appellant.

F072083

(Tulare Super. Ct. No. PCF304645)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Kathryn T. Montejano, Judge.

Donn Ginoza, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Defendant and Respondent.

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\* Before Levy, Acting P.J., Poochigian, J. and Smith, J.

## **INTRODUCTION**

Appellant/defendant Andrew Rene Guzman pleaded no contest to corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (a))<sup>1</sup> with a prior strike conviction, and he was sentenced to six years pursuant to a negotiated disposition. On appeal, his appellate counsel has filed a brief that summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We affirm.

## **FACTS<sup>2</sup>**

On the morning of August 13, 2014, H.M. was driving on Indiana Street in Porterville. He saw a man and woman standing next to a car and arguing. H.M. kept watching and saw the woman, later identified as K.F., on the ground. The man, later identified as defendant, dragged K.F. by holding her backpack. H.M. saw K.F. run into an orchard. H.M. contacted the police.

At 8:37 a.m., Tulare County Sheriff's Deputies Vieyra and Thigpen responded to the scene. Deputy Vieyra briefly spoke to H.M. about the situation, and then found defendant sitting in the driver's seat of the vehicle. Defendant appeared agitated and upset, and said he did not do anything wrong.

Deputy Thigpen went into the orchard and found K.F. as she was trying to climb over a chain link fence to get to Highway 65. When K.F. saw the deputy, she stopped trying to climb over the fence. K.F. ran toward Deputy Thigpen and yelled, " 'Help me. He's trying to kill me. Please help me.' " Deputy Thigpen testified K.F. was crying and hysterical, almost to the point of hyperventilating, and her clothes were in disarray.

Deputy Thigpen testified that K.F. said she was driving with defendant, who was her boyfriend. She told defendant that she did not want to be in a relationship with him

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The following facts are from the preliminary hearing transcript.

any longer. Defendant got upset with her. K.F. told him to pull over or she would call the police. Defendant grabbed her cellphone and threw it out the window. Defendant pulled over and stopped the car. K.F. said she got out of the car to retrieve her cellphone. Defendant followed her. K.F. told defendant to leave her alone. Defendant grabbed her backpack and purse, ripped them off her, and dragged her on the roadway. K.F. said she ran into the orchard. K.F. said she was pregnant.

K.F. asked Deputy Thigpen if he could retrieve her property from defendant's car. Thigpen asked what belonged to her. K.F. said she wanted her purse and backpack. She said the contents of the backpack belonged to defendant. Deputy Thigpen found the purse and backpack in the backseat of the car. The backpack contained female clothing, a knife, and a jar with marijuana remnants.

As a result of the incident, K.F.'s shirt was torn and exposed her upper body, which showed that she had a bruise above her left breast. She had cuts and scrapes on her hands, and marks on both wrists. K.F. also had a blister on her right arm; she said it was the result of when defendant bit her a few days earlier.

### **The information**

On January 23, 2015, an information was filed in the Superior Court of Tulare County charging defendant with the following offenses committed on or about August 13, 2015: count I, second degree robbery of K.F. (§ 211); count II, corporal injury to a spouse/cohabitant, K.F., who was the mother of defendant's child, resulting in a traumatic condition (§ 273.5, subd. (a)); and count III, misdemeanor interference with a wireless communication device with intent to prevent the use of the device to summon law enforcement. (§ 591.5).

As to count I, it was alleged defendant had one prior strike conviction. As to count II, it was alleged defendant had two prior strike convictions. As to counts I and II, it was alleged defendant had two prior serious felony enhancements (§ 667, subd. (a)); and one prior prison term enhancement (§ 667.5, subd. (b)).

### **The plea**

On February 6, 2015, the court granted the prosecution's motion to amend count II to allege that the offense involved a person with whom defendant had a dating relationship, and to strike the allegation that the victim was the mother of defendant's child.

Thereafter, defendant pleaded no contest to the amended count II, admitted one prior strike conviction, one prior serious felony enhancement, and the prior prison term enhancement, pursuant to a negotiated disposition for an indicated sentence of either five or six years, and a maximum term of nine years, and dismissal of the remaining charges.<sup>3</sup> The parties stipulated to the factual basis from the preliminary hearing and police reports. Defendant entered pleas in unrelated case Nos. 301159 and 300167, and admitted he violated probation in those cases.

### **Motion to withdraw**

On March 17, 2015, defendant appeared for the sentencing hearing, and asked to withdraw his plea. Defense counsel declared a conflict of interest. The court appointed the public defender to represent defendant and continued the matter.

On April 26, 2015, defendant filed a motion to withdraw his plea and admissions. Defendant claimed his prior counsel failed to explain the possible plea options, defendant was under the influence of prescription medication at the time of the plea, and he felt pressured to accept the plea. On May 15, 2015, defendant filed a signed declaration in support of his motion.

The People filed opposition and asserted defendant's claims were not supported by the record. The People further noted that at the plea hearing, the court advised defendant that he could receive either five or six years pursuant to the negotiated disposition. The

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<sup>3</sup> As noted in the probation report, defendant pleaded no contest to count II, a violation of section 273.5, which is a not a serious or violent felony. Thus, while defendant admitted the prior serious felony enhancement, that allegation was stricken.

probation report subsequently recommended six years, and defendant thereafter filed the motion to withdraw because of “buyer’s remorse.”

On June 10, 2015, the court heard and denied defendant’s motion to withdraw.

### **Sentencing**

On June 24, 2015, the court sentenced defendant to the midterm of three years for count II, doubled to six years as the second strike term.

On July 23, 2015, defendant filed a timely notice of appeal. He requested and received a certificate of probable cause as to the denial of his motion to withdraw his plea.

### **DISCUSSION**

As noted above, defendant’s counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on December 22, 2015, we invited defendant to submit additional briefing. He has failed to do so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.